

STATE OF CALIFORNIA

Public Utilities Commission
San Francisco

M e m o r a n d u m

Date: March 3, 2006

To: The Commission
(Meeting of March 15, 2006)

From: Delaney L. Hunter, Director
Office of Governmental Affairs (OGA) — Sacramento

Subject: **AB 1010 (Oropeza) Rail transit.**
As Amended April 6, 2005

LEGISLATIVE SUBCOMMITTEE RECOMMENDATION: Oppose

SUMMARY: This bill would transfer safety oversight for public transit guideways under Public Utilities Code section 99152 to the Department of Transportation (Caltrans).

DIVISIONAL ANALYSIS (Rail/Legal): In the 1950's when private transit agencies ceased operations, the California Legislature created the California Transit District Law creating transit districts as necessary throughout the state under the California Public Utilities Code. Each and every such district has been subject to the Public Utilities Commission's safety oversight from their inception.¹ California's transit safety program is known nationally and considered the best in the nation.² This bill is an example of a regulated entity seeking to thwart the safety oversight of a well-respected and effective state safety agency.³

¹ E.g., "The [Southern California Transit District—the successor district to the Los Angeles Metropolitan Transit Authority] shall be subject to regulations of the Public Utilities Commission relating to safety appliances and procedures, and the commission shall inspect all work done pursuant to this part and may make such further additions or changes necessary for the purpose of safety to employees and the general public." Cal. Pub. Util. Code § 36046. The California legislature previously had delegate safety oversight of the Los Angeles Metropolitan Transit Authority to the Commission. See *Los Angeles Metropolitan Transit Authority v. Public Util. Com.* 59 Cal. 2d 863 (1963).

² Aside from being the first state to regulate the safety of transit agencies in the nation and the recognized state leader in the field, the American Public Transportation Association lists the Commission's General Orders and RTSS rules as the only state transit safety regulations in its "Summary of Existing Standards for Transit Design and Safety Consideration."

³ The Commission's safety oversight jurisdiction is contained in Cal. Pub. Util. Code § 99152, which AB 1010 seeks to have transferred to the California Department of Transportation, and § 309.7(a) which provides in pertinent part: "The safety division of the commission shall be responsible for inspection, surveillance, and investigation of the rights-of-way, facilities, equipment, and operations of railroads and public mass transit guideways, and for

The rail transit safety program uses the expertise of the other safety units in the Public Utilities Commission (Commission) to enhance its safety oversight program. For example, FRA certified track and signal inspectors from the Rail Safety Branch participate in the triennial audits required by 49 Code of Federal Regulations Part 659. Removing the rail transit safety section to the department would make coordination between rail transit safety and rail safety much more difficult and would probably deprive the rail transit safety program of this expertise. Similarly the rail transit safety section used the expertise of the Utility Safety Branch when investigating complex design issues for overhead electric power systems.

Transferring the rail transit safety program to the department would disrupt on-going safety initiatives and impair program effectiveness during the transition period. Some of the staff will transfer to other units in the Commission rather than transfer to the department, further increasing transition costs and draining expertise. It takes approximately 2 years to train a utility engineer to function independently in rail transit safety. Hiring skilled rail transit safety engineers is unlikely since the State's pay and benefits are not competitive with the rail transit agencies for similar positions.

The proposed bill also would split rail transit safety responsibility between the Commission and the Department because it does not address other P.U. Code sections that relate to rail transit safety such as 309.7, 778, 29047, and 30646.

Finally, aside from the loss of synergies of maintaining all crossing safety engineering, both railroad and transit, within the Commission, there is the potential for conflicts of interest at crossings on the Caltrain, Capitol Corridor, Pacific Surfliner, and San Joaquin trains with respect to multiple use transit/freight-railroad (Union Pacific Railroad and BNSF Railway)/highway crossings, if Caltrans is charged with transit crossing safety.

The bill does not mention 49 U.S.C. section 5330~~4~~ or that the Commission is the State Oversight Agency designated by California to conduct "formal, comprehensive, on-site examination[s] . . . of a transit agency's safety practices to determine whether they comply with the policies and procedures required under the transit agency's system safety program plan" under 49 Code of Federal Regulations Part 659.5. As previously mentioned, there are other PU Code provisions for transit safety that would have to be modified to avoid conflict. Further, the proposed statute also would have to designate Caltrans as the State Oversight Agency for Federal Transit Administration purposes.

enforcing state and federal laws, regulations, orders, and directives relating to transportation of persons or commodities, or both, of any nature or description by rail. The safety division shall advise the commission on all matters relating to rail safety, and shall propose to the commission rules, regulations, orders and other measures necessary to reduce the dangers caused by unsafe conditions on the railroads of the state."

4 Title 49 U.S.C. section 5330 (c) provides that: "A State meets the requirements of this section if the State--

(1) establishes and is carrying out a safety program plan for each fixed guideway mass transportation system in the State that establishes at least safety requirements, lines of authority, levels of responsibility and accountability, and methods of documentation for the system; and (2) designates a State authority as having responsibility--

- (A) to require, review, approve, and monitor the carrying out of each plan;
- (B) to investigate hazardous conditions and accidents on the systems; and
- (C) to require corrective action to correct or eliminate those conditions."

FISCAL IMPACT: Significant. The Rail Transit Safety Section of the Consumer Protection and Safety Division would be dismantled or transferred to Caltrans. Fiscal Year 2004-05 funding is \$2,394,000 from the Public Transportation Account, State Transportation fund. This funding supports the 10 PY (employees) of the Rail Transit Safety Section, approximately 1 PY in the Rail Safety Branch, and the rest of the funding is used for ALJ/Legal support for Rail Transit Safety Cases and administrative overhead. It is reasonable to assume that this bill will shift all but \$100,000 of PTA funding to the Department of Transportation.

In addition, the Commission enjoys significant economies of scale of by housing rail transit safety personnel in its offices in San Francisco, Los Angeles, San Diego and Sacramento. The rail safety personnel share office equipment, rental space, state vehicles, and other resources with other Commission personnel improving equipment utilization and lowering overall cost. Transition costs of moving the Rail Transit Safety Section to the Department may be significant, depending on where the department chooses to locate the staff.

STATUS: AB 1010 has been referred to the Senate Energy, Utilities and Communications Committee but has not been set for hearing.

Staff has engaged in negotiations with the author's staff and the sponsors of the bill. However, negotiations to date have not resulted in mutually agreeable language.

SUPPORT/OPPOSITION

Support:

California Transit Association (sponsor)
Santa Clara Valley Transit Association

Opposition:

None on file.

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Date: March 3, 2006

BILL LANGUAGE:

BILL NUMBER: AB 1010 AMENDED
BILL TEXT

AMENDED IN ASSEMBLY APRIL 6, 2005

INTRODUCED BY Assembly Member Oropeza

FEBRUARY 22, 2005

An act to amend Section 99152 of, ~~and to add Sections 99152.1 and 99152.2 to~~ to add Section 99152.1 to, and to repeal Section 778 of , the Public Utilities Code, relating to transportation.

LEGISLATIVE COUNSEL'S DIGEST

AB 1010, as amended, Oropeza. Rail transit.

Existing law provides that any public transit guideway planned, acquired, or constructed after January 1, 1979, is subject to the regulations of the Public Utilities Commission relative to safety appliances and procedures.

This bill would transfer that responsibility to the Department of Transportation on January 1, 2007.

~~Existing law provides that the Public Utilities Commission, among other things, has exclusive power to determine and prescribe the manner of a crossing of a street by a railroad. Existing law requires the commission, in consultation with the Department of Transportation and rail transit operators, to adopt rules and regulations prescribing uniform standards regarding the time after the warning signal begins at a railroad crossing at which traffic enforcement shall begin.~~

~~This bill, on January 1, 2007, in the case of at grade or grade separated crossing of streets by rail transit services, would vest exclusive jurisdiction over those matters in the department.~~

Vote: majority. Appropriation: no. Fiscal committee: yes.
State-mandated local program: no.

THE PEOPLE OF THE STATE OF CALIFORNIA DO ENACT AS FOLLOWS:

SECTION 1. *Section 778 of the Public Utilities Code is repealed.*

~~778. The commission shall adopt rules and regulations, which shall become effective on July 1, 1977, relating to safety appliances and procedures for rail transit services operated at grade and in vehicular traffic. The rules and regulations shall include, but not be limited to, provisions on grade crossing protection devices, headways, and maximum operating speeds with respect to the speed and volume of vehicular traffic within which the transit service is operated.~~

~~The commission shall submit the proposed rules and regulations to~~

~~the Legislature not later than April 1, 1977.~~

~~SECTION 1.~~

SEC. 2. Section 99152 of the Public Utilities Code is amended to read:

99152. Any public transit guideway planned, acquired, or constructed, on or after January 1, 1979, is subject to regulations of the Public Utilities Commission relating to safety appliances and procedures. However, on and after January 1, 2007, the department shall succeed to the responsibilities of the commission in that regard.

The commission, until January 1, 2007, and the department, on and after that date, shall inspect all work done on those guideways and may make further additions or changes necessary for the purpose of safety to employees and the general public.

The commission, until January 1, 2007, and the department, on and after that date, shall develop an oversight program employing safety planning criteria, guidelines, safety standards, and safety procedures to be met by operators in the design, construction, and operation of those guideways. Existing industry standards shall be used where applicable.

The commission, until January 1, 2007, and the department, on and after that date, shall enforce the provisions of this section.

~~SEC. 2.~~

SEC. 3. Section 99152.1 is added to the Public Utilities Code, to read:

99152.1. The department shall adopt rules and regulations, which shall become effective January 1, 2007, relating to safety appliances and procedures for rail public transit services operated at grade and in vehicular traffic. The rules and regulations shall include, but not be limited to, provisions on grade crossing protection devices, headways, and maximum operating speeds with respect to the speed and volume of vehicular traffic within which the transit service is operated.

~~SEC. 3. Section 99152.2 is added to the Public Utilities Code, to read:~~

~~99152.2. Effective January 1, 2007, the department shall succeed to the responsibilities of the commission in Sections 1201 and 1202 relative to at grade or grade separated crossings of public streets, roads, or highways by the tracks of a rail public transit service. Those crossings shall be subject to the exclusive jurisdiction of the department.~~